IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(***Special Original Jurisdiction***)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

P R E S E N T

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO: 9408 of 2005

Between:

M/s Secunderabad Club Picket, Secunderabad Rep. by its

Secretary Brig. Ramanand Rao (Retd.)

..... PETITIONER

A N D

1 The Hon'ble Employees State Insurance Court Cum Industrial

Tribunal-I Chandra Vihar Buidlingsm, M.J.Road,
Hyderabad, Rep. by its Chairman.

2 The Employees State Insurance Corporation Regional Office, Hill

Fort Road, Hyderabad-63, rep. by its Dy Director.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue notice call for records quash, and set aside the impugned order dt.14.2.2005 made in IA No.303 of 2005 in EIC (SR) No.4238 of 2005 by the 1st respondent herein and set aside the impugned proceedings No.AP/INS/1/52-2178-112/21, dt.15.9.2003, issued by the respondent corporation by issuing a writ of Certiorari or any other appropriate order or orders of direction or direction.

Counsel for the Petitioner: MR.P.NAGESWAR SREE

Counsel for the Respondents: MR.R.N.REDDY

*The Court at the stage of admission made the following***:** (order follows 2nd page)

O R D E R :

This writ petition is filed questioning the order dated 14-2-2005 passed in I.A.No.303 of 2003 in EIC (SR) 4238 of 2003 on the file of the of Employees Insurance Court and Chairman Industrial Tribunal-I, Hyderabad, dismissing the application filed under section 75 (2-B) of the Employees State Insurance Act (for short 'the Act') seeking to waive or reduce the conditions of deposit of 50% of the contribution amount as claimed by the ESI Corporation through the impugned proceedings No.AP/INS.1/52-2178-112/21, dated 15-9-2003 and directing the petitioner to deposit 50% of the contribution amount as demanded by the Corporation to raise the dispute within thirty days from 14-2-2005.

M/s. Secunderabad Club, Picket is a members club and its objects are confined to social activities including sports, recreation and entertainment. The second respondent ESI Corporation during the year 1977 sought to cover the petitioner establishment under ESI Act. The petitioner resisted the said attempt stating that it is not covered by the provisions of ESI Act. The petitioner filed EI Case No.119 of 1978 before the Employees Insurance Court, Hyderabad, wherein the said court held that the provisions of ESI Act are not applicable to petitioner club. Against the said order, no appeal was preferred by the Employees Insurance Corporation.

Mr.P.Nageswar Sree, the learned counsel for the petitioner seeks to contend that in the earlier round of litigation the petitioner moved this court and filed EI Case No.35/81 and the same was allowed. Against the order dated 03-4-1992 passed in

EI Case No.35/81, the respondent preferred CMA.No.686 of 1982. The Division Bench of this Court dismissed CMA.Nos.684, 685 and 686 of 1982 in view of the principle laid down in Section 11 of CPC and passed common order on 21-12-1984. Thereafter, against the common order dated 21-12-1984 passed by the Division Bench, the respondent preferred SLP before the Supreme Court. The Hon'ble Supreme Court while dismissing the SLP upheld the judgment of the Division Bench of this court. Now the issue of coverage of Petitioner Club had attained finality. Therefore, the respondent has no power or any authority to reopen the issue of coverage of petitioner club under ESI Act time and again, as it is a bar as per the principles of resjudicata.

On the other hand, Mr.R.N.Reddy, the learned standing counsel appearing for the respondent no.2 submitted that it is a fact that in EI Case No.119 of 1978 and EI Case No.35 of 1981 the petitioner succeeded but those orders are limited to particular period and those orders are passed under the provisions of ESI Act, 1948 considering the factory and establishment at that particular period and time with reference to guidelines and instructions issued during that period and they are not applicable to the clubs. Further the principle of resjudicata will not apply in the instant case and the said doctrine will apply only when law remains unchanged. But in the instant case, the law as well as case law has been changed.

Sub-Section (2-B) of Section 75 of the Act, reads as under :

> *"(2-B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees Insurance Court unless he has deposited with the Court*

fifty per cent of the amount due from him as claimed by the Corporation.

Provided that the Court may for reasons to be recorded in writing waive or reduce the amount to be deposited under this sub-section.

Sub-Section (2-B) of Section 75, which is the bone of contention, provides a rider on the right of principal employer to raise dispute in respect of any contribution or any other dues, which have been made by the Corporation, he is required to deposit with the Court 50% of the amount claimed from as due by the Corporation.

After hearing both sides and considering the facts and circumstances of the case, it appears that the Employees Insurance Court directed to deposit 50% of the contribution amount as demanded by the Corporation to raise the dispute, in fact in my considered opinion that question now cannot be gone into but that will be subject to the result of EIC (SR).No.4238 of 2003. Now sub-section (2-B) of Section 75 of the Act envisages discretion to the court to record reasons in writing either at the time of waiving or reducing the amount to be deposited under this sub-section. It is pertinent to note that earlier on the same issue the petitioner-club had succeeded in the litigation and taking into consideration the fact that the petitioner had succeeded in the earlier round of litigation, I deem it appropriate that instead of directing to deposit 50% of the contribution amount, the petitioner club is directed to deposit 25% of the contribution amount within four weeks from the date of receipt of a copy of the order.

With the above direction, the writ petition is disposed of at the admission stage. No costs.

APRIL26th, 2005. ----------

I S L. ELIPE DHARMA RAO , J.

To

1. The Chairman, Employees State Insurance Court Cum Industrial

Tribunal-I Chandra Vihar Buidlingsm, M.J.Road, Hyderabad.
2. The Dy Director, Employees State Insurance Corporation Regional

Office, Hill Fort Road, Hyderabad-63.

3. Two CD Copies.

4. 1 C.C. to Mr.R.N.Reddy, counsel for the respondent, Advocates'

Association, High Court Buildings, High Court of AP Hyderabad.

5. 1 C.C. to Mr.P.Nageswara Sree, counsel for the petitioner,

Advocates' Association, High Court Buildings, High Court of AP

Hyderabad.